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Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, Mass. 02110

RE: D.T.E. 01-81, Bay State Gas Co. (BSG or the Company) proposed Gas Cost Incentive Mechanism (GCIM)

Dear Secretary Cottrell:

Pursuant to the Department's notice dated December 4, 2001,[1] this is the Comment of the Low-Income Energy Affordability Network (LEAN), *et al*., whose petition to intervene was filed December 27, 2001. This is also LEAN's Motion to Dismiss, or in the alternative, to consolidate with D.T.E. 01-100, Notice of Inquiry Re: Volatility Mitigation, and suspend action on the Company's petition until the proceedings in D.T.E. 01-100 are concluded.

I. Introduction

A statement of interest is contained in the Petition to Intervene of LEAN *et al.* Gas commodity prices have been extremely volatile in the last eighteen months,[2] ranging from $2 to $10. Such roller coaster pricing is impossible for low-income families to budget for. Unable to meet the costs of basic necessities when prices are reasonable, low-income families are put under particular stress when prices soar by a factor of five – even though prices then drop … almost certainly to rise again with no warning. From one month to the next, families do not know whether or not they will be able to afford to pay for the heat they cannot live without.

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[1] Pursuant to leave granted by telephone this day by Michael Killion, this Comment is filed electronically today and will be physically filed tomorrow with the Secretary.
[2] *E.g.*, DaFonte Test. at 9, 10; Co. Exh. FCD-2.

This Comment calls for the dismissal of the Company's petition primarily because the Company's proposal addresses the wrong problem, fails to repair even the problem it wrongly identifies, and would make it impossible to address the actual difficulties its customers face due to price volatility. The Company's objective is admittedly limited to lowering customer prices from moment to moment, though only by no more than 3.75%. This would *lock in* what the Company's customers see as the scourge of price volatility, which has made it difficult this winter for customers to budget and pay for their heating bills from last winter. As described below, the proposal would also create new and unacceptable risks for customers that would result in rates that are even more unjust and unreasonable than its current volatile rates. In doing so, the Company's proposal would single out BSG customers for adverse treatment with respect to the volatility mitigation issues raised in D.T.E. 01-100 by making price stability impossible to achieve for BSG customers.

Bay State Gas Co. and its customers should be treated no differently than the other Local Distribution Companies (LDCs) and their customers with respect to the policies under consideration in D.T.E. 01-100. Instead, the Company's petition has been held six weeks before issuance of Notice, then scheduled for comment almost two weeks earlier than the comments in D.T.E. 01-100, with the result that only the comments related to BSG's proposal would be prepared over the Christmas and New Year's holidays. This separate proceeding for BSG further implies the possibility that BSG and its customers may receive different, and adverse, treatment with respect to price volatility mitigation than the rest of the Commonwealth.

To correct this injustice, BSG's Petition should be dismissed (without prejudice to its refiling the proposal in D.T.E. 01-100 if it chooses to do so) and this docket should be closed. Alternatively, the two dockets should be consolidated for hearing and decision.[3] At a minimum, all proceedings in this docket should be held in abeyance until the resolution of the issues in D.T.E. 01-100 since identical issues are raised in both cases. It is illogical and unreasonable to decide issues for one utility when the same issues are pending on a generic basis in a simultaneous proceeding.

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[3] This is procedurally more difficult since the instant docket is arguably an adjudicatory one while D.T.E. 01-100 is a rulemaking proceeding.

II. As acknowledged in the D.T.E. 01-100 Notice of Inquiry, recent wholesale price movements warrant corrective action by the Department. As the Notice states, several issues should be resolved on a generic basis before such action is taken.

Massachusetts has been slower than many states to respond to what has been a catastrophe of roller-coaster gas heating bills for many families. With families unable to pay their heating bills, and utility arrearages skyrocketing as a result, many states have allowed or required their gas utilities to alter their purchasing practices from the prevailing spot-index contracting.[4] The focus has been on minimizing price volatility as well as price levels. For example, a long-standing New York Public Service Commission policy provides:

> Local [gas] distribution companies have many ways to meet their loads; they should consider all available options … [which] may include short and longer term fixed price purchases, spot acquisitions, the use of financial hedges … While we are not directing any particular mix of portfolio options, volatility of customer bills is one of the criteria, along with other factors such as cost and reliability, that LDCs should consider … Any utility without a diversified pricing strategy will have to meet a heavy burden to demonstrate that its approach is reasonable.[5]

The Notice of Inquiry (NOI) in D.T.E. 01-100 raises the price volatility issue alongside other issues that are identical to those raised by BSG's petition in this docket. Among these issues are:

1. The appropriate balance between price stability and price level (NOI Q. 5). BSG's proposal that no attention be paid to price stability is at one extreme end of the spectrum of possible outcomes in D.T.E. 01-100. LEAN *et al.* favors a balance between the two objectives.

2. The extent of D.T.E. oversight (NOI Q. 1 re: allow vs. require, Q. 3 re: allowable instruments, Q. 4 re: volume limits, Q. 6-7 re: Department review). Again BSG's proposed limited mechanical review based only on published indices is at one extreme end of

[4] *E.g.*, Arkansas, California, Colorado, Iowa, Kansas, Kentucky, Mississippi, Missouri, New York, Oklahoma.

[5] Statement of Policy Concerning Gas Purchasing Practices at 4-5, Case 97-G-0600 (April 28, 1998).

the spectrum of possible levels of regulatory participation resulting from D.T.E. 01-100. LEAN *et al.* prefer consideration of a more substantive but before-the-fact, pre-approval review in order to fairly balance the risks between LDCs and their customers.

3. The allocation of risk between Company and customer (NOI Q. 9 re: incentives, Q. 8 re: cost recovery). BSG's proposal again answers the question in only one of a number of possible ways, proposing to increase overall risks and transfer risks to customers.

These generic policy questions should be resolved, as scheduled, in D.T.E. 01-100, then applied to each LDC. The Company's proposal to reverse the sequence is unreasonable and should be rejected.

III. The Company's filing is deficient and should be dismissed because the proposal would retain at least the current level of price volatility while increasing risk and shifting it to customers.

The Company's petition is admirably clear in its objective of slightly lower customer prices for purchased gas.[6] However, prices would continue to be based on volatile spot price indices,[7] which the Company would try to beat. While this strategy may conceivably have a small impact on price levels,[8] the only impact it can have on price volatility is to make it worse by increasing price swings by the amount of incentive the Company might receive. This represents a profound misreading by the Company of its customers' needs.

The Company asserts that its proposal would promote price stability,[9] but it concedes that its program is not directed to price stability[10] and offers no support whatsoever for its bare assertion. Indeed, the proposal's total reliance on spot prices flatly and totally contradicts the assertion. The Company offers no quantitative evidence whatsoever of the impact of its proposal on price level *or* price stability[11] other than the promise that customer costs of purchased gas would never be

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[6] Petition at 1; Bryant test. at 2-3, 7; DaFonte test. at 15, 20, 31.
[7] Petition at 1; DaFonte test. at 17; proposed CGAC at sec. 6.09(1).
[8] LEAN *et al.* take no position on this question at this time.
[9] Bryant test. at 19.
[10] *Id.*
[11] The closest it comes is a one-month *illustration*. DaFonte test. at 24-25, Co. Exh. FCD-4.

higher or lower than 3.75% of spot.[12] Further, although the Company agrees that long-term contracts lead to price stability,[13] it would limit all transactions to five years or less.[14]

What is worse is that the Company's proposal would increase overall risk and shift risk to customers. The Company repeatedly points out how complex,[15] and thus opaque, its proposed transactions would be. High-risk transactions would be permitted with only the most general, non-specific descriptions of how financial meltdown might be avoided.[16] The proposed protective policy is more a list of wished-for outcomes than it is a description of specific protective actions. In fact, the Company explicitly hopes to make its money by betting on price movements[17] rather than protecting consumers by conservative hedging strategies such as disciplined laddering of maturities and dollar-cost-averaging.

Meanwhile, the proposal would shift to customers financial responsibility for an arbitrarily set "reliability premium"[18] that is concededly not part of the actual price of gas,[19] as well as for transaction costs and gains and losses.[20]

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[12] DaFonte test. at 20.
[13] Bryant test. at 7.
[14] Co. Exh. FCD-5 at 7-8.
[15] Bryant test. at 8, 18, 19; DaFonte test. at 8, 11.
[16] *See* DaFonte test. at 26-28, Co. Exh. FCD-5 at 8 *et seq.* We have recently had a spectacular demonstration of the limits of a general Risk Management Policy.
[17] *E.g.*, DaFonte test. at 33.
[18] Proposed CGAC at sec. 6.09(1)(d).
[19] DaFonte test. at 18-19.
[20] DaFonte test. at 21; Petition at 1; proposed CGAC at sec. 6.10(1)(b)v and (c)v, (2). These do not appear to be the kind of exogenous costs that the Department ordinarily allows to pass through incentive schemes. *See* Bryant test. at 13.

IV. Conclusion: the Company's proposal offers virtually no benefits to BSG customers and should be rejected.

In sum, the Company is proposing incentives for itself in exchange for:

1. no improvement in price volatility, the most important current rate issue for Company customers,
2. the chance for a 3.75% purchased gas cost reduction to customers – offset by the chance of a 3.75% purchased gas cost increase and the certainty of the extra costs of an arbitrary reliability premium plus transaction costs, gains and losses, and
3. a significant increase in total financial risk.

WHEREFORE, for all these reasons, LEAN *et al.* urge the Department to reject BSG's proposed GCIM and move that the Company's petition in this case be dismissed. Alternatively, LEAN *et al.* move that this proceeding be consolidated with D.T.E. 01-100, which encompasses identical issues on a generic basis, and that all action on the Company's petition be held in abeyance until all issues in D.T.E. 01-100 are resolved.

Respectfully submitted,
Low-Income Energy Affordability Network, *et al.*, by their attorneys

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